

OCT 18 2005

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ROGELIO ROQUE-HERNANDEZ,

Defendant - Appellant.

No. 03-50499

D.C. No. CR-02-01293-JFW-2

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
John F. Walter, District Judge, Presiding

Submitted October 11, 2005^{**}

Before: T.G. NELSON, WARDLAW, and TALLMAN, Circuit Judges.

Rogelio Roque-Hernandez appeals the 292-month sentence imposed following his conviction for two counts of conspiracy to possess with intent to distribute more than 500 grams of a substance containing methamphetamine, in

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

violation of 21 U.S.C. §§ 841(a)(1), 846. We have jurisdiction under 28 U.S.C. § 1291.

Because appellant's sentence, imposed pre-*Booker*, was enhanced by judge-found facts concerning the amount and purity of the drug in question, we remand for further proceedings consistent with *United States v. Ameline*, 409 F.3d 1073, 1085 (9th Cir. 2005) (en banc).

REMANDED.